

Remarks/Arguments

Claims 1, 2, 4, 7, 8, and 11-13 were pending in the application. Claims 1, 2, 4, 7, 8, and 11-13 were rejected. No claims were withdrawn. No claims were merely objected to and no claims were allowed. By entry of the foregoing amendment, claims 11-13 are canceled without prejudice or devotion of the subject matter to the public, claims 1, 7, and 8 are amended, and no new claims were added. Support for the amendments to claims 1, 7, and 8 may be found in claims 11-13. No new matter is presented.

Applicant Initiated Telephone Interview

Applicant thanks Examiner Shah for his willingness to conduct an after final interview in the present application on October 16, 2008. Applicant and Examiner Shah discussed the teachings of the Yamashita reference and the definitions of the claim terms “image” and “state”. Applicant proposed amending independent claims 1, 7 and 8 to incorporate dependent claims 11-13, respectively. Applicant contended Yamashita does not disclose a plurality of geographic features that would influence the movement of characters. Examiner Shah disagreed. Applicant then requested the Examiner clarify his rejection with respect to the interpretation of the claim terms “image” and “state”. Examiner Shah explained his interpretation of the claim terms. Examiner Shah also expressed his opinion that there is still relevant prior art which he has yet to search and cite in the record of the present application. Lastly, Examiner Shah offered to change the outstanding rejection under 35 U.S.C. §102(b) to a rejection under 35 U.S.C. §103(a) to cure any alleged deficiencies that Yamashita does not explicitly disclose each and every claim limitation as required under 35 U.S.C. §102(e). In conclusion, Applicant and Examiner Shah did not reach an agreement.

Claim Rejections-35 U.S.C. §102

The Examiner asserts claims 1, 2, 4, 7, 8, and 11-13 are rejected under 35 U.S.C. §102(e) as being anticipated by United States Patent No. 6,231,440 to Yamashita (“Yamashita”). Applicant traverses the rejection.

The Examiner asserted the newly added claim language in Applicant’s response dated April 10, 2008 failed in his opinion to overcome the teachings of Yamashita. In particular, the

Examiner explained Yamashita discloses “fixed objects and the like” in the background, that is the map image which is similar to the scene or venue at which characters battle. In the Applicant’s telephone interview with the Examiner, the Examiner stated the second embodiment taught by Yamashita discloses a sports game where a player, e.g., a skier, must avoid geographic features, e.g., a tree, while traversing the game terrain. The Examiner asserted the feature from the second embodiment taught by Yamashita could be utilized in the combat scenario of the first embodiment taught by Yamashita. The Examiner asserts he is required to use the broadest reasonable interpretation in view of broad language in claims. Hence, the Examiner asserts Yamashita anticipates Applicant’s claims.

Anticipation requires the presence in a single prior art disclosure of all elements of a claimed invention arranged as in the claim. (*Connell et al. v. Sears, Roebuck & Co.*, 220 USPQ 193, 198 (CAFC 1983)). The meaning of the expression “arranged as in the claim” is readily understood in relation to claims drawn to things such as ingredients mixed in some claimed order. In such instances, a reference that discloses all of the claimed ingredients, but not in the order claimed, would not anticipate, because the references would be missing any disclosure of the limitations of the claimed invention “arranged as in the claim” (*Net Moneyin, Inc. v. Verisign, Inc. et al.*, 2007-1565, 15 (CAFC October 20, 2008)). But the “arranged as in the claim” requirement is not limited to such a narrow set of “order of limitations” claims. (*Id.*). Rather, our precedent informs that the “arranged as in the claim” requirement applies to all claims and refers to the need for an anticipatory reference to show all of the limitations of the claims arranged or combined in the same way as recited in the claims, not merely in a particular order. (*Id.*). The test is thus more accurately understood to mean “arranged or combined in the same way as in the claim.” (*Id.*). “We thus hold that unless a reference discloses within the four corners of the document not only all of the limitations claimed but also all of the limitations arranged or combined in the same way as recited in the claim, it cannot be said to prove prior invention of the thing claimed and, thus, cannot anticipate under 35 U.S.C. §102.” (*Id.*, at pp. 17-18).

Applicant disagrees with the Examiner’s interpretation of Yamashita’s disclosure. According to Yamashita, the geographic features are not interposed between the challenger one and challenger two as taught therein. Rather, Yamashita teaches the geographic features are merely part of the background such as images on wallpaper. Consequently, Applicant

respectfully disagrees with the Examiner's characterization that Yamashita somehow discloses fixed objects such as geographical features are able to exert an influence upon the movement of the characters and result in combat between the characters as described therein. Clearly, Yamashita does not contemplate interposing geographical features between the challengers and requiring the challengers to navigate through such features during combat. In addition, Applicant notes the teaching of utilizing a geographical feature as an obstacle is taught in the second embodiment of Yamashita where a player, e.g., a skier, navigates a ski slope and avoids striking a geographical feature, e.g., a tree. Applicant contends the examiner cannot combine the teachings of two different embodiments of Yamashita to anticipate each and every element recited in Applicant's independent claims.

Second, Applicant contends the terms "image" and "state" are not vague when given their plain and ordinary meaning. Applicant confirms the Examiner's interpretation of the terms "image" and "state" as discussed in the telephone conference of October 16, 2008 were not conflicting with the plain, ordinary meaning assigned to such terms. Applicant contends the terms "image" and "state" are not vague as the Examiner properly expressed their meaning to Applicant during the aforementioned telephone interview.

For at least these reasons, Applicant contends amended independent claims 1, 7, and 8, and their dependent claims 2 and 4, are patentable and not anticipated by the teachings of Yamashita.

Applicant requests the Examiner withdraw the rejection under 35 U.S.C. §102(e) and find claims 1, 2, 4, 7, 8, and 11-13 are allowable.

CONCLUSION

In light of the foregoing, it is submitted that all of the claims as pending patentably define over the art of record and an early indication of same is respectfully requested.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims as amended herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

If any fees are required in connection with this case, it is respectfully requested that they be charged to Deposit Account No. 02-0184.

Respectfully submitted,
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